

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

SHIRLEY E. SHEFFER and
SCOTT SHEFFER,

Plaintiffs,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant.

Case No. 3:12-cv-00238-WHR

District Judge Walter H. Rice

**NOVARTIS PHARMACEUTICALS CORPORATION'S MOTION TO
STRIKE PLAINTIFFS' INCOMPLETELY HIGHLIGHTED
TRANSCRIPTS (DOC. NOS. 99 and 100)**

As part of the Joint Pretrial Order, the parties submitted designations, counter-designations, and objections to prior deposition and trial testimony of witnesses, primarily defendant Novartis Pharmaceuticals Corporation (“Novartis”) current or former employees. *See* Doc. Nos. 90-3 and 90-4. Plaintiffs subsequently filed certain highlighted transcripts purporting to provide plaintiffs’ and defendant’s designations and counter-designations, to aid the Court in ruling on objections. (Doc. Nos. 99 and 100). Novartis hereby moves to strike several of plaintiffs’ filed transcripts that were not highlighted to match the designations indicated in the spreadsheets filed with the court.

On June 30, 2014, Novartis sent a letter to plaintiffs detailing how several of their filed transcripts were incompletely highlighted—mostly in that they did not include Novartis’s counter-designations—and asking plaintiffs to correct them (Doc. No. 101-E). Plaintiffs have not responded to this letter.

Attached hereto are revised versions of the transcripts, which match the designations in the “updated Exhibit 3” Novartis filed on June 30, 2014 (Doc. No. 101- B). These transcripts are highlighted to indicate plaintiffs’ and Novartis’s designations, counter-designations and objections. Novartis also includes transcripts it has identified as counters to plaintiffs’ designations that plaintiffs did not include in their filings. Novartis does not resubmit transcripts which plaintiffs submitted that contained all the proper designations and objections. In addition to the electronically attached transcripts, Novartis is prepared to provide the Court with highlighted paper copies of those transcripts at a time convenient to the Court:

Epstein, *Aredia/Zometa MDL*, 2/9/2010 (Ex. A)

Fratarcangeli, *Aredia/Zometa MDL*, 5/22/2008 (Ex. B)

Goessl, *Aredia/Zometa MDL*, 4/5/2008 (Ex. C)

Green, *Aredia/Zometa MDL*, 11/12/2008 (Ex. D)

Machalaba, *Chiles*, 2/19/2013 (Ex. E)

Maladorno, *Davids*, 10/10/2012 (Ex. F)

Ruggiero, *Davids*, 10/17/2012 (Ex. G)

Tarassoff, 30(b)(6), 1/23/2008 (Ex. H)

Tarassoff, *Aredia/Zometa MDL*, 4/10/2008 (Ex. I)

Tarassoff, *Aredia/Zometa MDL*, 4/18/2008 (Ex. J)

Tarassoff, 30(b)(6), 1/14/2009 (Ex. K)

Tarassoff, *Davids*, 10/15/2012 (Ex. L)

Weiss, *Aredia/Zometa MDL*, 3/11/2008 (Ex. M)

Weiss, *Davids*, 10/18/2012 (Ex. N)

Young, *Chiles*, 2/25/13 (Ex. O)

There are also additional transcripts plaintiffs did not submit to the Court that contain testimony Novartis has designated as counter-designations to plaintiffs’ designations under

Federal Rule of Evidence 106 and/or as affirmative designations. Novartis has not attached copies of these transcripts to this Notice, but is prepared to provide the Court with highlighted electronic and/or paper copies of those transcripts at a time convenient to the Court. Plaintiffs have not designated any testimony from these transcripts and have not objected to the specific line and page designations. Their only objections are that these transcripts should not be played in their case and that some of the witnesses are not unavailable under Rule 804(b). Transcripts in which only Novartis designates testimony:

Dunsire, *Aredia/Zometa MDL*, 3/6/08

Fratarcangeli, *Meng*, 5/6/13

Goessl, *de bene esse*, 6/21/10

Goessl, *Georges*, 4/10/13

Hei, *Aredia/Zometa MDL*, 4/3/08

Machalaba, *Aredia/Zometa MDL*, 5/28/08

Machalaba, *Meng*, 5/7/13

Maladorno, *Meng*, 5/6/13

Marx, *Davids*, 10/11/12 and 10/16/12

Ruggiero, *Deutsch*, 5/12/08

Sablinska, *Meng*, 5/8/13

Tarassoff, *Meng*, 4/29/13

Weiss, *Meng*, 5/2/13

Young, *Aredia/Zometa MDL*, 6/5/08

Young, *Davids*, 10/23/12

Young, *Meng*, 5/2/13

Young, 30(b)(6), 2/23/10

Young, *Winter*, 4/4/12

Dr. Haluschak, 6/8/11

Dated: July 7, 2014

/s/ Frank Leone

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 7th day of July, 2014, served a true and correct copy of the foregoing Motion to Strike, by operation of the Court's Electronic Case Filing System on the following:

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